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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,160	12/29/2000	Simon Qin	3667-0102P	6544

7590 04/30/2004

BIRCH, STEWART, KOLASCH & BIRCH, LLP  
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EXAMINER

LE, DIEU MINH T

ART UNIT PAPER NUMBER

2114

DATE MAILED: 04/30/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/750,160	QIN, SIMON
Examiner	Art Unit	
Dieu-Minh Le	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 27 February 2004.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-20 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 27 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

**DETAILED ACTION**

1. This Office Action is in response to the amendment filed February 17, 2004 in application 09/750,160.
2. Claims 1-20 are again presented for examination.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable Ji et al. et al. (US Patent 6,392,872 hereafter referred to as Ji) in view of Kandasamy et al. (US Patent 5,513,314 hereafter referred to as Kandasamy).

This rejection is being applied for the same reasons set forth in the previous Office Action paper number 4, paragraph 4 mailed August 05, 2003.

As per claims 1-20, see the previous office action for the detailed teaching of Ji and Kandasamy as well as the motivation and reasons for combined.

Applicant asserts that Ji in combining with Kandasamy failed to teach or suggest the following:

a. the application has the backup/recovery techniques to back up and/or recover data in the data storage device. A restore point can be created prior to downloading an executable file. In the event of virus attack and the computer system crash, the backup/recovery system and methodology enables the user to instantly recover deleted or overwritten file, and the computer system configuration, to any point in time prior to the downloaded data arrival. The files and the system configuration are cleanly and completely restored in minutes. Hence, the improvement of the application is remarkable for the data storage device while its data is under whole automatic protection from viruses.

Examiner respectfully transverses Applicant's argument as follows:

a. First, in response to Applicant's argument that the references fail to show certain features of Applicant's invention, it is noted that the feature upon which Applicant relies (i.e., the application has the backup/recovery techniques to back up and/or recover data

in the data storage device. A restore point can be created prior to downloading an executable file. In the event of virus attack and the computer system crash, the backup/recovery system and methodology enables the user to instantly recover deleted or overwritten file, and the computer system configuration, to any point in time prior to the downloaded data arrival. The files and the system configuration are cleanly and completely restored in minutes. Hence, the improvement of the application is remarkable for the data storage device while its data is under whole automatic protection from viruses) is not recited in the rejected claim. Although the claims is interpreted in light of the specification, limitations from the specification is not read into the claims. *In re Van Guens, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).*

Second, it is not true that Ji in combining with Kandasamy failed to teach Applicant's argument.

Examiner would like to bring Applicant attention to Ji's apparatus and method for electronic mail virus detection and elimination [abstract, fig. 12-15, col. 1, lines 10-20] comprising:

- a connectivity among clients/servers, application program, display, other computing communication devices, etc... [fig. 1-3, col. 5, lines 14 through col. 6, lines 56];
- virus or error detected transmitted between sources and destination or client/server environment [col. 3, lines 18-22, col. 3, lines 55 through col. 4, lines 10, and col. 17, lines 18-32].

**Ji explicitly teaches method for processing a file before transmission in to the network a method for processing a file before transmission from the network [col. 3, lines 42-45].**

Therefore, it would have obviously clear to an ordinary skill in the art at that Applicant's argument is clearly addressed, demonstrated, illustrated, and taught by Ji. That is a file is clearly process prior transmission to and from the network. And therefore, virus can be detected, isolated, and processed accordingly.

Third, as indicated in previous Office Action that it would have been obvious to a person having ordinary skill

in the art at the time the invention was made to realize the combination of Ji and Kandasamy would provide the error and/or virus detection and correction within a backup/recovery management computer system environment, more specifically to a computer client/server with a mechanism to enhance the computer system performance and processing in ordering to provide a continuity network operating system functionality. It is further obvious because by utilizing this approach, the computer backup/recovery system with error and/or virus detection and correction capabilities within computer system can be realized in:

- first, any error, virus, or failure occurred in a computer system can be identified, detected, corrected via data networking environment;

- second, the computer system can operate with a high reliability and flexibility environment which will correctly provide optimum data availability and connectivity;

- third, the computer system can be thoroughly managed in ensuring the entire fault detection system free of errors, improving the performance, and reducing the risk of data loss.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dieu-Minh Le whose telephone number is (703) 305-9408. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel, can be reached on (703) 305-9713. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

**Any response to this final action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703)872-9306, (for formal communications; please mark  
"EXPEDITED PROCEDURE")

Hand-delivered responses should be brought to Crystal Park II,  
2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).



DIEU-MINH THAI LE  
PRIMARY EXAMINER  
ART UNIT 2114

DML  
4/28/04